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09/091,788 09/08/98 ONO

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EXAMINER

SHARMA, R

ART UNIT

PAPER NUMBER

3651

DATE MAILED:

06/13/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/091,788

Applicant(s)
Kenji Ono

Examiner
Rashmi Sharma

Group Art Unit
3651



☒ Responsive to communication(s) filed on Mar 28, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-12 is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-12 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 11

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3651

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being unpatentable by Brown (U.S. patent number 5,010,973).

Brown discloses a self-propelled vehicle with a driving portion (12) and a steering portion (34), able to run forward and backwards as recited in claim 1. Brown also discloses a front wheel portion and a truck portion (10) where the driving portion and the steering portion are disposed at the front wheel portion as recited in claim 2. Brown also discloses a steering portion (34) equipped with a bar handle (33) as recited in claim 4.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. patent number 5,010,973).

Brown does not disclose a supporting bar made removable for supporting the operator when in a standing position from behind. It would have been obvious to provide the vehicle of Brown with a support bar since, it is within the purview of one of ordinary skill in the art to provide a means for stabilizing an operator when in the standing position.

5. Claim 3, 6, 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown as applied to claims 1, 2 and 4 above, and further in view of Coker (U.S. patent number 5,125,468).

Coker discloses a front wheel portion that is made to be removable with respect to the truck portion (10) as in claim 3. Coker also discloses a bar handle including a handle stem (73), arranged at the upper end of a front wheel suspending portion (25) to be turned to rise and fall, a handle bar (312) fixed to the end of portions of the handle stem (73) as in claim 6. Coker teaches of a seat (23) with arm rests (15a and 16a) to seat an operator as in claim 7. Coker also teaches of a self-propelled vehicle maintaining a speed equal to that of walking speed as in claim 10. Coker discloses an electric motor (30) as well as a power supply (12) as in claim 11.

It would have been obvious to one of ordinary skill in the art to use the qualities of Coker combined with the vehicle in Brown for the improving the comfort of the operator when seated.

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6. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown as applied to claim 1, 2 and 4 above, and further in view of Cassano (U.S. patent number 5,346,028).

Cassano discloses a self propelled vehicle where the bar handle (4) is reversely turned toward the front wheel as in claim 5. Cassano also discloses one front wheel and two rear wheels

Cassano does not disclose a driving portion driving the front wheel. Since the provision of placing the electric motor to drive the front wheel is within the purview of one of ordinary skill in the art for the purpose of driving the self propelled vehicle. It would have been obvious to one of ordinary skill in the art to combine the features of Brown and Cassano in a self propelled vehicle for the purpose of creating a more simply made self propelled vehicle.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown as applied to claim 1, 2, and 4 above, and further in view of Benson et al. (U.S. patent number 2,842,374).

Benson et al. discloses a seat (48) to turn 360 degrees and to fix the seat at a desired position.

It would have been obvious to one of ordinary skill in the art to modify the vehicle of Brown including a swivel seat fixed at a desired position as taught by Benson in order to permit a more interesting and desired view of the rider and/or operator.

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Response to Arguments

8. Applicant's arguments filed 3/28/2000 have been fully considered but they are not persuasive.

In response to applicant's argument that Brown does not disclose an apparatus which can be operated in the rearward direction wherein the operator does not ride thereon, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

It would be obvious to one having ordinary skill in the art to operate any one of the above mentioned references to operate the vehicle without a rider thereon in the rearward direction.

In response to applicant's argument that Cassano and Benson et al. are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Cassano clearly discloses self propelled vehicle to which claims 5 and 12 have been rejected and Benson et al. clearly discloses an element of the claimed invention, claim 8 and has been rejected above.

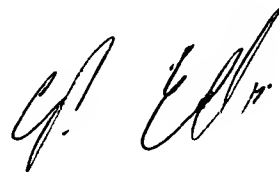
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Applicant should note that the invention as claimed in the amended independent claim is still too broad to be deemed allowable. Almost any self propelled vehicle can be adapted to perform the functions claimed within amended claim 1 and therefore can not be allowed. Although, if the applicant included the specific structure that enabled and supported the functions being claimed in claim 1, the applicant would more than likely be able to obtain a patent.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



R. Sharma

CHRISTOPHER P. KELLY
PATENT EXAMINER